

Part 100 Chapter 36 Eligibility for Membership in the Public Employees' Retirement System of Mississippi (PERS)

100 Purpose

The purpose of this regulation is to clarify which employees are eligible for coverage and membership service credit in the Public Employees' Retirement System of Mississippi (PERS).

101 Definitions

1. Definition of "Position"

Participation in PERS is limited to eligible employees who occupy a covered position with a qualifying governmental entity. Miss. Code Ann. § 25-11-103(s) (1972, as amended) defines "position" as any office or any employment in the state service or two (2) or more of them, the duties of which call for services to be rendered by one (1) person, including positions jointly employed by federal and state agencies administering federal and state funds.

2. Definition of "Employee"

"Employee" means any person legally occupying a position in state service and shall include the employees of the retirement system. An employee is a person in the service of another where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed. Only employees are eligible for membership in PERS.

3. Definition of Independent Contractor

An independent contractor is one, who in the exercise of independent employment, contracts to do a piece of work according to his or her own methods and is subject to his or her employer's control only as to the end product or final result of his or her work. An independent contractor is not eligible for membership in PERS.

4. Definition of "Employer"

"Employer" means the State of Mississippi or any of its departments, agencies, political subdivisions, or instrumentalities from which any employee receives his or compensation.

5. Definition of "State Service"

"State Service" means all offices and positions of trust or employment in the employ of the state, or any political subdivision or instrumentality of the state that elects to participate in PERS by way of Joinder Agreement in accordance with Miss. Code Ann. § 25-11-105(f) (1972, as amended), including the position of elected fee officials of the counties and their deputies and employees performing public services and any department independent agency, board or commission, and also including all offices and positions of trust or employment in the employ of joint state and federal agencies administering state and federal funds and service rendered by employees of the public schools.

102 Eligibility for PERS membership

To participate in PERS an individual must be an employee in a covered position with a covered employer subject to the control of the covered public employer as defined in Internal Revenue Service (IRS) guidelines and must satisfy the following requirements:

- a. Be properly classified as an employee;
- b. Have compensation properly reported on IRS Form W-2;
- c. Be paid regular periodic compensation; and
- d. Be treated as an employee for all general purposes, including but not limited to eligibility for fringe benefits, payment of employment related expenses, payroll tax withholding, etc.

103 Eligibility for Membership Service Credit

To receive service credit for any month, a member must be employed in a position in which the employee works the equivalent of at least one-half (1/2) of the normal working load for the position and earns at least one-half (1/2) of the normal compensation for the position in any month. Any person whose employment is anticipated to exceed 4 and 1/2 months shall be covered, whether probationary or otherwise.

- a. Requirements for general, non-elected employees
 - 1. For non-elected, non-school personnel, this means any position in which the employee personally performs services and receives compensation for not less than 20 hours per week or a total of 80 hours per month. Except as otherwise provided by law, no creditable service shall be allowed for service when the employee is not paid for at least 20 hours service per week or for a total of 80 hours per month.
 - 2. For non-elected, school employees, where the full time work load is based on 35 hours per week, this means any position in which the employee personally performs services and receives compensation for not less than 17.5 hours per week or a total of 70 hours per month. For school employees employed pursuant to a contract, the employee must substantially complete the legal school term in order to receive credit for a full year of service. Substantial completion of the legal school term is defined as the employee completing the full school term and receiving at least 11/12th of the contract salary for the school term.
- b. Requirements for elected officials

State-wide and district-wide elected officials and local elected officials, including fee paid elected officials, not excluded by a joinder agreement or by law who are compensated on an annual or monthly salary, shall be deemed to be full-time employees in a covered position eligible for membership service credit.

104 Positions excluded from coverage

- 1. An appointed or elected official compensated on a per diem basis only is not eligible for membership in PERS and thus not eligible for membership service credit. This includes school board members who are specifically excluded from PERS membership pursuant to Miss. Code Ann. § 37-6-13 and who may elect to receive either a per diem or a monthly salary.
- 2. Employees whose positions are excluded from coverage by way of Joinder Agreement are not eligible for membership in PERS and thus not eligible for membership service credit.

3. Students of any State educational institution employed by any agency of the State for temporary, part-time or intermittent work as described in PERS Board Regulation 37 are not eligible for membership in PERS and thus not eligible for membership service credit.
4. Patients or inmate help who work in state charitable, penal or correctional institutions are not eligible for membership in PERS and thus not eligible for membership service credit.
5. Persons whose employment is temporary in nature or which is intermittent and who are not employed at least 4 and 1/2 consecutive months shall not be in a covered position, and shall not be covered by PERS. However, this limitation shall not apply to any individual who is already in a covered position under PERS either with the same or another covered agency.
6. Any employee engaged on a day-to-day basis to replace another employee who is temporarily absent shall be considered a "substitute" in temporary and intermittent employment and shall not be covered under PERS. An employee engaged to fill a vacant position (including a position vacated by an extended leave of absence) is not considered a "substitute" if such employment is for a period of 4 and 1/2 consecutive months or longer and therefore must be covered under PERS.

105 Effect of Dual Employment on Reportable Earnings and Membership Service Credit

1. Effective July 1, 1999, any member in a covered position, as defined by PERS laws and regulations, who is also employed by another covered agency or political subdivision shall have the earnings of that additional employment reported to PERS provided the employee occupies a position that would otherwise be covered if the employee worked and was paid for a sufficient number of hours as set forth in this Regulation. The wages from the second position are reportable to PERS if the second position is independently covered under PERS or if the second position is less than half-time, but would otherwise be covered independently if the employee worked the requisite number of hours.
2. PERS law provides that not more than one (1) year of service is creditable for all services rendered in any one (1) fiscal year. Where a member holds two (2) or more covered positions simultaneously, as defined in this Section, PERS can grant creditable service, including membership service credit and credit for unused leave, on only one such position. A member may be covered in two positions with two different employers where both employers provide leave benefits. While the wages of both covered positions are required to be reported to PERS, no more than one year of service credit will be granted during the year regardless of the number of positions held. In addition, upon retirement, PERS can grant additional retirement service credit for accumulated unused leave from only one position.
3. Where a position is expressly excluded by law or where the position is expressly excluded by Joinder Agreement, wages from the second expressly excluded position shall not be reported to PERS. In no case should compensation paid to an individual as an independent contractor be reported to PERS.

106 Work requirement exception for members employed as of July 1, 1992

Effective July 1, 1992, any employee employed in a position in which he or she received compensation for less than 20 hours per week or a total of 80 hours per month, or in which school personnel receive compensation for less than half-time for the academic year, shall not be, or become a member, except that any active member employed in such position on July 1, 1992, may continue as an active member so long as they are employed in such position.

107 Work requirement exception for members performing professional services

Any active member employed on July 1, 2002, by a covered governmental entity to perform professional services and who participates in PERS based on the performance of such services will continue to be an active member for as long as he or she is employed in such position. This provision applies to an individual, not a firm of individuals, employed as an employee on a regular basis to provide professional services, such as legal or engineering services, to a participating governmental entity. Determination of coverage eligibility is first subject to the authority of the governing entity to employ such professional. If the governing authority has the authority to employ the professional in a state service position as defined in Section 101.5 of this Regulation and if the professional is determined to be an employee by using the guidelines expressed by the IRS, the professional hired on or after July 1, 2002, is subject to the same participation criteria, including the prerequisite minimum number of hours worked and compensation received as any other employee.

108 Determination of Employee Status

The employer has the responsibility for the proper employment classification of an individual as an employee or independent contractor. PERS uses the guidelines published by the IRS as reflected in FORM SS-8 for determining worker status. If, based on the facts, it is determined that an employer has made an error in classification, PERS will require the employer to correct any reporting error resulting from the misclassification.

(History: Adopted December 17, 1991; amended effective July 1, 1999; amended effective July 1, 2002; amended June 21, 2005 to be effective August 1, 2005; reformatted and amended August 1, 2007; clarified effective August 1, 2011)